HIGH COURT OF UTTARANCHAL AT NAINITAL.

First Appeal No. 408 of 2001 (Defective)
(Old F.A. No. 54 of 1991 (Defelctive)

The Special Land Acquisition Officer (J.O.) Saharanpur.

… **Appellant.**

Versus

1. Jahoor Ahmad, S/O Rasula Baksh R/O Piran Kaliya, Tahsil Rookee, District Haridwar.
(Claimant)

… **Respondent.**

Smt. Bina Pande, learned Standing Counsel (U.P.Government)-appellant.
None appeared for th erespondent.

Date August 03, 2006.
Hon. B.S. Verma, J.
(Delay Condonation Application nil of 1991)

Heard learned counsel for the appellant on the application for condonation o f delay in filing the appeal. The cause shown in the affidavit is sufficient. Delay is condoned. The application is allowed. Appeal is admitted.

This appeal is directed against the judgment and ward in Lan Acquisition Reference No. 133 of 1989 Jahoor Ahmad Vs. The Collector Haridwar, whereby the learned Reference Court allowed the reference in part and the claimants were entitled to get compensation @ Rs. 30,000/- per Bigha along with interest @ 12% under Section 23(1-A) and solatium @ 30% and interest as per Section 28 of the land Acquisition act, as mentioned in the impugned order.

At the outset, it may be mentioned that the State Government had acquired land under the World Bank Project for modernization of upper Ganga Canal from the land-owners. The notice under Section 4 of the land Acquisition Act, 1894 ***(for short the Act)*** was issued for acquisition of 12-5-10 Bigha land followed by the Notification under Section 6 of the Act, which was published

on 14-3-1987 and in respect of the land under acquisition, land-owners-claimants had objected to the award passed by the Special land Acquisition Officer, which led to different land Acquisition References. The learned Additional District Judge, Roorkee (Haridwar) by a common judgment and award has decided as many as eight references, namely, Lan Acquisition Reference No. 133 of 1989, Zahoor Ahmad Vs. Collector, (present case) L.A. Reference No. 125 of 1989, Ahmad Ali Vs. Collector, L.A. Reference No. 151 of 1989, Mohd. Dilshad Vs. Collector, L.A. Reference No. 145 of 1989, Sharafat Vs. Collector, and L.A. Reference No. 153 of 1989, Mohd Shafi and other Vs. Collector. Except L.A. Reference No. 131 of 1989, which was dismissed all other references were allowed in part vide order dated 23-8-1990. Some other references were decided by separate judgment and award including the present one and the award dated 23-1-1989 passed by the Special Land Acquisition Officer was challenged.

The landowners field their objections under Section 9 of the Act, which were taken up by the Special land Acquisition Officer for disposal. After necessary formalities under the provisions of the Land acquisition Act 1894, the Special Land Acquisition Officer (for short the S.L.A.O.) assessed compensation of the acquired land vide his award dated 23.1.1989 thereby total compensation of Rs. 53,71,433.90 was awarded to the claimants. Being aggrieved by the award of SLAO, some of the claimants preferred reference under Section 18 of the Act for adjudication of proper value of the land. It was stated that the compensation awarded to them is inadequate; that the acquired land is a place of religious value and tourists from abroad also visit that place and there exists Mazar of Dargah Sabir Saab and fairs are held about four times every year and the claimants are benefited from those fairs by shop-keeping business and during rest of the year crops are harvested from the acquired land. According to them the market value of the

Acquired land was no less than 50,000/- per Bigha. It was also stated that the land bore high potential being near the Abadi.

It was however observed by the Reference Court that though the claimants alleged that the land in question was near Abadi and Dargah, there was no such evidence on record to show that the acquired land lay near the Abadi, rather some land is situate at a distance of 500 Mt. And some 1 km. Away the Abadi. It was also observed that the land was not fit to fetch any amount at the time of publication of notice under Section 6 to the Act. The theory of the land being given on rent is also not supported by any evidence.

On the other hand, the claim of the claimants was resisted by the Collector. The State field his written statement and supported the compensation awarded by the S.L.A.O. It was alleged that the objectors were heard before passing the award. It was denied that any fair used to be held on the acquired land. The main Dargah is situate about 2 Kms. away from the land under acquisition. It was maintained that the amount of compensation fixed by the S.L.A.O. was adequate.

On the pleadings of the parties, necessary issues were framed. Learned Reference Court recorded the evidence led by the parties, heard them and after perusing the evidence on record, the learned Reference Court observed that the SLAO committed some error in assessing the market value of the land. Ultimately, taking into consideration the entire facts and circumstances market value of the acquired land was fixed @ Rs. 30,000/- per Bigha and accordingly, the impugned award was made as mentioned earlier.

The main ground to assail the impugned award passed by the Reference Court is that the learned Reference Court was not justified in awarding a flat rate of Rs. 30,000/- towards market value for the entire land under acquisition and the finding to that effect is

not supported by evidence on record. It was submitted that the market rate as per Circle Rates assessed by the SLAO was justified in awarding the compensation according to circle rates, therefore, the Reference Court has erred in awarding a flat rate @ Rs. 30,000/- without taking into consideration the Circle Rates.

At the outset, it is pertinent to note that the Circle Rates fixed by the Collector are meant mainly for the purposes of realizing Stamp Duty and they cannot be made the basis for award of compensation under land acquisition act. I am fortified in my view by the Apex Court verdict ***"Ramesh Chand Bansal and others [(1999) 5 Supreme Court Cases, Page 62]*** *wherein it has been held that* ***"circle rates fixed in the circular are not final but a prima facie determination of rate for the guidance of the registering authority- Hence, the appellant-purchaser who had paid stamp duty without the requisite increase of 20% and was, consequent to a reference under S.47-A(2) by the registering authority, given a notice by the Collector (ADM (F&R) in this case] to show cause against enhanced payment of stamp duty, held, could in the proceedings before the Collector challenge the valuation prima facie fixed in the impugned circular."*** It has been fairly admitted by the learned Standing Counsel that the market value of the acquired land has to be determined primarily on the basis of the sale-deeds as provided under the Land Acquisition act and that too the market value of the l and at the date of publication of the notification under Section 4, sub section (1) of the Act.

In the instant case, the lender Reference Court has turned down the contention of the claimants that the market value of the land could not be less than Rs. 50,000/- per Bigha and has also observed that the SLAO in his Award made a reference to a sale deed dated 20-10-1984 whereby land of Khasara No.116 measuring 1-1-1-5 Bigha was sold for a consideration of rS. 30,000/-. This sale exemplar in itself was indicative of the fact that at the relevant time, the market value of the land could be Rs. 30,000/- per Bigha. The said land was sold by one Shafiq Ahmad in favor of Alhaz Darvesh. The acquired land is in the vicinity of the said land and it has been relied upon by the S.L.A.O. himself. It was further observed that on the other hand the SLAO has considered the circle rates fixed by t he Collector. It is not disputed the nature of the acquired land is similar to that of the land sold by Safiq Ahmad, refereed to above. In my view, the S.L.A.O. ought to have awarded the compensation on the basis of the sale-deed referred to and relied upon by the S.L.A.O., the Reference Court has awarded compensation @ Rs. 30,000/- per Bigha.

Having considered the entire material on record as well the impugned award, I do not find any infirmity or illegality in the order passed by the Reference Court. The Reference Court has dealt with all t he relevant points in the impugned judgment. I am in full agreement that in the present case, compensation @ Rs. 30,000/- per Bigha was the just and adequate compensation.

For the reasons and discussion aforesaid, I find that the appeal preferred by the State-appellant is devoid of merit and is liable to be dismissed.

The appeal is hereby dismissed. The impugned judgment and order dated 23-8-1990 is affirmed. No order as to costs.

(B.S. Verma, J.)

RCP